

Before the
Administrative Hearing Commission
State of Missouri



ZACH D. PINZKE,

Petitioner,

vs.

DEPARTMENT OF NATURAL
RESOURCES,

Respondent.

No. 13-0333 SWC

DECISION

We dismiss Petitioner Zach D. Pinzke's appeal of the deactivation of his public water system, DS-1 distribution certificate.

Procedure

Mr. Pinzke filed a letter and attachments with this Commission on February 19, 2013, which we treat as his complaint. The respondent, the Department of Natural Resources, filed a motion to dismiss on March 13, 2013. We notified Mr. Pinzke that he should file any response by March 26, 2013, but he filed nothing.

The Department's motion to dismiss, which is based on the content of Mr. Pinzke's complaint, is in the nature of a motion for involuntary dismissal, 1 CSR 15-3.436¹, or for

¹ All references to "CSR" are to the Missouri Code of State Regulations, as current with amendments included in the Missouri Register through the most recent update.

decision on the pleadings, 1 CSR 15-3.446. We therefore take as true the allegations contained in the complaint, for purposes of ruling on the motion. 1 CSR 15-3.436(3); 1 CSR 15-3.446(4).

Findings of Fact

1. Zach D. Pinzke held a public water system, DS-1 distribution certificate, with a renewal date of November 30, 2012.
2. Mr. Pinzke did not receive any notices from the Department of Natural Resources about renewing his certificate, so he did not pay the renewal fee or send anything in to the Department before November 30, 2012, or within the two-month grace period after that date.
3. After the two-month grace period passed, Mr. Pinzke received a letter from the Department, notifying him that his certificate had been deactivated.

Conclusions of Law

In general, this Commission has jurisdiction of appeals from decisions of the director of the Department relating to certain environmental commissions, including safe drinking water. *See* § 621.250, RSMo.²

The Department issues and renews public water system, DS-1 distribution certificates, among other types. *See generally* 10 CSR 60-14.020. The procedures for renewal of such a certificate are established by the regulation. 10 CSR 60-14.020(8). A regulation promulgated pursuant to statutory authority, such as the one here, has the force and effect of law, and this Commission must follow it. *See Pollock v. Wetterau Food Distr. Group, Inc.*, 11 S.W.3d 754, 767 (Mo. App. E.D. 1999) (a duly promulgated regulation binds a court, which cannot substitute its own judgment). *See also Dilts v. Dir. of Revenue*, 208 S.W.3d 299, 302 (Mo. App. W.D. 2006)(same).

² All references to “RSMo” are to the Revised Statutes of Missouri (Supp. 2012), unless otherwise noted.

The certificate renewal procedures are very specific. Under 10 CSR 60-14.020(8)(E), a certificate holder must renew using the form supplied by the Department and must pay a renewal fee. “Any certificate not renewed within the two (2) months following the expiration shall be considered lapsed.” 10 CSR 60-14.020(8)(F). An operator who wishes to renew a lapsed certificate must submit a new application and submit to reexamination as provided in the regulation. *Id.*

The regulation provides for one limited exception. If a certificate holder has timely submitted a proper application, but the Department delays renewal until after expiration of the holder’s certificate, then the certificate remains valid until the Department issues the replacement or denies renewal. 10 CSR 60-14.020(8)(H). Even under this sole, limited exception, the certificate holder must timely seek renewal.

The regulation also addresses a certificate holder’s lack of notice from the Department. It specifically provides that while the Department will send a renewal notice to a certificate holder’s last known address at least 60 days before a certificate expires, the Department’s “[f]ailure...to notify the certified operator of the certificate’s pending expiration does not relieve the certified operator of the responsibility for renewing the certificate.” 10 CSR 60-14.020(8)(D). In other words, a certificate holder is always responsible for timely seeking to renew.

The regulation elsewhere specifically addresses appeal rights to this Commission in the case of the Department’s decision to deny, suspend, or revoke a certificate. 10 CSR 60-14.020(7)(E). But it does not provide for appeal rights in the case of an expired or deactivated one. This regulatory scheme is consistent with statute, inasmuch as § 621.250.3 provides for appeals to this Commission from “[a]ny decision by the director” of the Department. Expiration or lapse of a certificate is effected by operation of the regulation, not a “decision” by the director of the Department.

Here, Mr. Pinzke held a “DS-1” certificate, the first level of public water system distribution operator certification. 10 CSR 60-14.020(1)(C), Table 2. He did not renew before his certificate expired, nor did he renew within the two-month grace period established by the regulation. His position is that had he known he needed to do anything to renew, he would have done it, on time, and he essentially asks this Commission to afford him relief because an honest mistake occurred. While we have no reason to disbelieve him, the regulation is plain and very specific, and we are bound by it. It provides that responsibility for renewal is always on him.

Under the circumstances here, Mr. Pinzke has no right of appeal to this Commission. His recourse is to reapply and be reexamined.

Therefore, we must dismiss his complaint.

Summary

The Department’s motion to dismiss is granted.

The hearing presently scheduled for May 1, 2013 is canceled.

SO ORDERED on April 10, 2013.

/s/ Alana M. Barragán-Scott
ALANA M. BARRAGÁN-SCOTT
Commissioner